

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

MAHMOUD MUSTAPH SAFA,

Petitioner,

v.

Civil Action No. 5:07CV154
(STAMP)

WAYNE PHILLIPS, Warden,

Respondent.

MEMORANDUM OPINION AND ORDER
AFFIRMING AND ADOPTING REPORT AND
RECOMMENDATION OF MAGISTRATE JUDGE

On November 26, 2007, the petitioner filed an application for habeas corpus pursuant to 28 U.S.C. § 2241, seeking an order directing the Bureau of Prisons ("BOP") to transfer him to a Community Corrections Center ("CCC")¹ for the last six months of his term of imprisonment. The petition was referred to United States Magistrate Judge John S. Kaull for an initial review and submission of proposed findings of fact and recommendation pursuant to Local Rule of Prisoner Litigation Procedure 83.09.

Following an order directing the respondent to show cause, Stephen Herndon filed a notice of appearance on behalf of the petitioner. On January 4, 2008, the respondent filed a motion to dismiss as moot. The petitioner filed a response in opposition to

¹The BOP now refers to Community Corrections Centers as Residential Release Centers; for purposes of clarity and consistency with the terms used in documents the parties have filed with this Court, this order will continue to refer to the facilities as Community Corrections Centers ("CCCs").

the respondent's motion. Upon review of the petition, motion and response, the magistrate judge issued a report and recommendation recommending that the petitioner's § 2241 petition be dismissed as moot. The magistrate judge informed the parties that if they objected to any portion of the report, they must file written objections within ten days after being served with copies of the report. The petitioner, by counsel, filed objections.

Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court must conduct a de novo review of any portion of the magistrate judge's recommendation to which objection is timely made. As to those portions of a recommendation to which no objection is made, a magistrate judge's findings and recommendation will be upheld unless they are "clearly erroneous." See Webb v. Califano, 468 F. Supp. 825 (E.D. Cal. 1979). Because objections were filed in this case, this Court has undertaken a de novo review of the report and recommendation.

Magistrate Judge Kaull recommends that the petitioner's § 2241 petition be dismissed as moot because the BOP in fact considered the five factors set forth in 18 U.S.C. § 3621(b) in making the petitioner's CCC referral recommendation. This Court agrees. Inmates are not entitled to six months CCC placement, rather they are entitled to have their placement considered in accordance with the five factors enumerated in 18 U.S.C. § 3621(b). See Jaworski v. Gutierrez, No. 5:06CV157 (N.D. W. Va. Aug. 23, 2007). In this

case, a case manager at FCI-Morgantown has averred, in a declaration attached as Exhibit 1 to the respondent's motion to dismiss and in testimony before the magistrate judge, that BOP staff utilized the five factors enumerated in 18 U.S.C. § 3621(b) when re-reviewing inmate Safa's case file and making a new referral. In his objections, the petitioner emphasizes that his referral date did not change after the BOP reconsidered his referral recommendation using the five factor standard. This objection is without merit. Again, the petitioner is not entitled to a particular referral date. Rather, the BOP has discretion to designate a prisoner's place of imprisonment, the exercise of which is limited only by the statutory requirement that the BOP consider all of the factors listed in 18 U.S.C. § 3621(b) in making placement and transfer decisions. The petitioner has failed to present any evidence that these factors were not appropriately considered in his case. Therefore, because the BOP gave the petitioner's case appropriate consideration under 18 U.S.C. § 3621(b), the petitioner has received all manner of relief to which he is entitled.

Accordingly, this Court hereby AFFIRMS and ADOPTS the magistrate judge's report and recommendation in its entirety. The respondent's motion to dismiss as moot is GRANTED, and the petitioner's § 2241 petition is DISMISSED AS MOOT. It is ORDERED

that this case be DISMISSED and STRICKEN from the active docket of this Court.

Should the petitioner choose to appeal the judgment of this Court to the United States Court of Appeals for the Fourth Circuit on the issues to which objection was made, he is ADVISED that he must file a notice of appeal with the Clerk of this Court within 30 days after the date that the judgment order in this case is entered. See Fed. R. App. P. 4(a)(1). He is further advised that a certificate of appealability is not required for a federal prisoner proceeding under 28 U.S.C. § 2241. See 28 U.S.C. § 2253(c)(certificate of appealability is required in a § 2255 proceeding or in a habeas corpus proceeding in which the detention complained of arises from process issued by a State court); see also Fed. R. App. P. 22; Drax v. Reno, 338 F.3d 98, 106 n.12 (2d Cir. 2003).

IT IS SO ORDERED.

The Clerk is DIRECTED to transmit a copy of this memorandum opinion and order to the petitioner and to counsel of record herein. Pursuant to Federal Rule of Civil Procedure 58, the Clerk is DIRECTED to enter judgment on this matter.

DATED: June 2, 2008

/s/ Frederick P. Stamp, Jr.
FREDERICK P. STAMP, JR.
UNITED STATES DISTRICT JUDGE